

On this second appeal, respondent has produced additional evidence to support its claim of misrepresentation. Respondent also argues we now have direction from the Court

of Appeals on how to treat the legal question. Respondent contends that the recent Court of Appeals decision in *Ramirez v. Excel Corporation*, Docket No. 80,670, Kan. App., rev. denied ___ Kan. ___ (1999), suggests that misrepresentation made at the time of hiring will bar a workers compensation claim by an employee if there is a causal relationship between the misrepresentation and the injury.

For the reasons stated in the initial Order by the Appeals Board, dated April 28, 1999, the Board holds that a misrepresentation made at the time of hiring does not bar a workers compensation claim even if the injury is causally related to that misrepresentation. In our view, the *Ramirez* decision does not hold otherwise. In that case, the question was whether the claimant, who had been terminated after the injury when it was discovered that he had given false information on his application for employment, would be entitled to work disability. The Court of Appeals held that the Board erred when they awarded work disability in the *Ramirez* case. But the *Ramirez* decision does not address the question presented here. The Board concludes, as stated by the ALJ at the conclusion of the initial preliminary hearing, the claimant is entitled to benefits if he suffered accidental injury arising out of and in the course of employment and otherwise meets the criteria of the Act. The Act does not make misrepresentation on an application for employment a defense.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bruce E. Moore on June 1, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Terry J. Torline, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director